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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,664	02/20/2004	Edward William Bydalek	BYDE 8848U1	7260
1688	7590	09/20/2005	EXAMINER	
POLSTER, LIEDER, WOODRUFF & LUCCHESI 12412 POWERS COURT DRIVE SUITE 200 ST. LOUIS, MO 63131-3615			HOGE, GARY CHAPMAN	
			ART UNIT	PAPER NUMBER
			3611	

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/783,664	Applicant(s) BYDALEK ET AL.	
	Examiner Gary C. Hoge	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-17, 19-26 and 28-31 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-9 and 12 is/are rejected.
- 7) ☒ Claim(s) 5, 10, 11, 18 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/20/04</u> .   | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities: On page 12, line 7, it appears that “green” should be “yellow” (see Fig. 7). On page 13, line 4, it appears that “further” should be “farther”.

Appropriate correction is required.

### *Claim Objections*

2. Claims 8, 18 and 27 are objected to because of the following informalities: on line 3, it appears that “the a sequence” should be “a sequence”. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3, 4 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Cohen (2004/0090797).

Cohen disclose a device comprising a body portion having a battery (paragraph 0014), a light source **14**; a microprocessor (paragraph 0014) for controlling electrical current supplied to the light **14** source from the battery; a motion sensor (paragraph 0014) for detecting when the device has been moved; and a timer (paragraph 0014) for causing electrical current to be interrupted to the light source **14** from the battery when a predetermined period of time has

expired; and a handle portion made from a translucent material (paragraph 0004) having an internal cavity for accepting the body portion.

Regarding claim 6, see paragraph 0014.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen (2004/0090797) in view of Nowakowski (4,337,402).

Cohen discloses the invention substantially as claimed, as set forth above. However, Cohen does not disclose a specific motion sensor. Therefore, a person having ordinary skill in the art must choose a motion sensor from those that were known in the art, as a matter of choice in design. Nowakowski teaches that a motion sensor of the type recited was known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was

made to use a motion sensor of the type taught by Nowakowski in the device disclosed by Cohen, as a matter of choice in design.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen (2004/0090797) in view of Robb (5,619,182).

Cohen discloses the invention substantially as claimed, as set forth above. However, Cohen discloses only a single LED. Robb teaches that it was known in the art to provide a toy with a plurality of LEDs and a plurality of switches that control the relative intensity of the LEDs. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device disclosed by Cohen with a plurality of LEDs and a plurality of switches to control their relative intensity, as taught by Robb, in order to provide an aesthetically pleasing display.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen (2004/0090797) in view of Dowling et al. (2003/0214259).

Cohen discloses the invention substantially as claimed, as set forth above. However, Cohen discloses only a single LED. Dowling teaches that it was known in the art to provide a toy with a plurality of LEDs and a plurality of switches that control the sequence in which the LEDs are activated. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device disclosed by Cohen with a plurality of LEDs and a plurality of switches to control their sequence, as taught by Dowling, in order to provide an aesthetically pleasing display.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen (2004/0090797) in view of Maglica et al. (6,457,840).

Cohen discloses the invention substantially as claimed, as set forth above. However, Cohen discloses not disclose an o-ring. It is quite common to use an o-ring to seal a handle that is openable for the removal of batteries, as taught by Maglica. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device disclosed by Cohen with an o-ring, as taught by Maglica, in order to keep water from intruding into the handle.

11. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen (2004/0090797) in view of Carpenter (6,082,868).

Cohen discloses the invention substantially as claimed, as set forth above. However, Cohen uses visible light to illuminate the handle. Carpenter teaches that it was known in the art to use "black light" to illuminate a florescent display. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use invisible "black light" to illuminate florescent material in the device disclosed by Cohen, as taught by Carpenter, in order to provide an aesthetically pleasing display.

*Allowable Subject Matter*

12. Claims 5, 10 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. Claims 13-17, 19-26 and 28-31 are allowed.

14. Claims 18 and 27 would be allowable if rewritten to overcome the above objection.

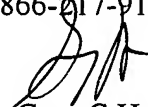
*Conclusion*

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary C. Hoge whose telephone number is (571) 272-6645. The examiner can normally be reached on 5-4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary C Hoge  
Primary Examiner  
Art Unit 3611

gch